UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

GLADYS BRYANT, an Individual

Petitioner

and **Case No. 19-RD-223236**

EMBASSY SUITES BY HILTON, SEATTLE DOWNTOWN PIONEER SQUARE

Employer

and

UNITE HERE LOCAL 8

Union.

UNITE HERE LOCAL 8' OPPOSITION TO PETITIONER'S REQUEST FOR REVIEW

Submitted by:

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Other Authorities

UNITE HERE Local 8 ("Union") hereby opposes Gladys Bryant ("Petitioner")'s request for review of Regional Director Ronald K. Hook's dismissal of her decertification petition in this case. The Regional Director correctly determined based on existing law that the petition should be barred because it was filed prior to the passage of a reasonable period of time since the Embassy Suites by Hilton ("Employer") had voluntarily recognized the Union as bargaining agent for its employees. Petitioner concedes that the Regional Director correctly dismissed the petition based upon the law as it stands, but argues that the Board should abolish or substantially modify the policy by which it has disallowed challenges to a union's majority status for a reasonable period of time following voluntary recognition. Because the petition for review offers no compelling reason for the Board to abandon a policy that for more than five decades has advanced the Section 7 right of employees to designate agents for the purpose of collective bargaining, its request for review should be denied.

ISSUE PRESENTED

Since 1966, the Board has applied the voluntary recognition bar as a means of balancing both the Section 7 right of employees to designate a collective bargaining representative, protecting that choice from a decertification challenge for a reasonable period of time, and the Section 7 right of employees to elect whether they desire continued representation by that representative at reasonable intervals. Petitioner urges the Board to abandon the voluntary recognition bar in favor of allowing employees to file immediate decertification petitions, hypothesizing without evidence that the recognition bar shackles employees from challenging voluntary recognitions that might be the

product of illegal collusion between self-interested employers and unions. Should the Board deny Petitioner's request for review, hewing instead to longstanding principles that have successfully promoted employee statutory rights for over five decades?

STATEMENT OF THE FACTS

On May 17, 2018, the Employer recognized the Union as the exclusive representative for collective bargaining of unit of its employees at the Embassy Suites by Hilton, Downtown Pioneer Square in Seattle, Washington. Arbitrator Sylvia Skratek determined on that day that a majority of employees in the bargaining unit had authorized the Union to represent them based upon her review of authorization cards submitted by the Union and her comparison of them with records provided by the Employer.

On July 5, the Petitioner filed the petition in the instant proceeding. The same day, she filed unfair labor practice charges in 19-CA-223234 and 19-CB-223341 alleging that the Employer had recognized the Union at a time when the Union assertedly lacked the support of an uncoerced majority of employees. Upon investigating the petition, the Regional Director determined that whether the voluntary recognition bar could be asserted in the case depended on whether the recognition had been valid in the first instance. He placed the instant proceeding in abeyance to afford Petitioner the opportunity to present evidence in favor of her unfair labor practice charges. Petitioner responded by withdrawing the charges. Accordingly, the Regional Director determined that the Employer had validly recognized the Union for purpose of applying the recognition bar. Finding that the bar applied, the Regional Director dismissed the petition.

Petitioner seeks review of the dismissal, arguing that the Board should overrule its decision in *Lamons Gasket*, 357 NLRB 739 (2011). Instead of reverting to the modified recognition bar adopted by the Board in *Dana Corp*., 351 NLRB 434 (2000), Petitioner argues that the Board should now abolish the voluntary recognition bar altogether.

ARGUMENT

Petitioner's request for review presents no compelling reason to reconsider the Board's recognition bar doctrine. In both *Lamons Gasket* and in *Dana Corp*., the Board acknowledged that the bar plays a necessary role in the proper administration of the National Labor Relations Act. Petitioner's proposal that it be abolished would constitute a radical departure from a policy that has been accepted at a basic level by the Board across every presidential administration since the mid-1960s. Petitioner offers no compelling reason for such an extreme reversal of policy. Nor does Petitioner offer compelling reasons for the Board either to experiment with new modifications to the bar, or to overrule *Lamons Gasket* based on the disproven idea that voluntary recognition as a means for establishing Section 9(a) status should be distrusted. The recognition bar has served and continues to serve a vital role in balancing the statutory interests of employees both to engage in collective bargaining and to choose their representatives at reasonable intervals. The Board should decline Petitioner's invitation to fix what is not broken.

I. Congress and the courts have made clear that voluntary recognition is a legitimate component of the NLRA.

Petitioner's request for review is fueled by a deep hostility to voluntary recognition as a valid means for establishing representative status within the framework

of the NLRA. Because that hostility animates the speculative insinuations that she offers about the motives of employers and unions in reaching voluntary recognition agreements, we will start by reviewing the legitimate role that Congress gave voluntary bargaining relationships within the structure of the Act.

Petitioner posits that a union's status as exclusive bargaining agent is inherently suspect when bestowed voluntarily by the employer instead of through a secret ballot election because employers and unions cannot be trusted to abide by the law. She argues that, when presented with a claim that an employer has voluntarily recognized a union based on authorization cards evidencing majority support, "[t]he Board does not know if the cards were obtained by the union through coercive means, obtained by the employer, or if employees revoked or tried to revoke those cards." Request for Review, p. 6. Indeed, it is "naïve for the Board to assume that an employer's decision to recognize a union means that employees truly want that union's representation," and for the Board even to entertain that assumption is like "a chicken farmer deliberately entrusting foxes with guarding his henhouse." *Id.* at p. 8. In the Petitioner's idiosyncratic view, the Board's principal purpose is to defend the hapless poultry from the ravenous instincts of predatory employers and unions.

Petitioner's attack on the legitimacy of voluntary recognition stands in stark contrast to Congress' explicit approval of it as a valid means to establish Section 9(a) status under the National Labor Relations Act. Congress recognized voluntary recognition in two parts of the Act. First, Section 9(c)(1)(A) states "[w]henever a petition shall have been filed . . . by an employee or group of employees or any individual or

labor organization acting in their behalf alleging that a substantial number of employees [ ] wish to be represented for collective bargaining and *that their employer declines to recognize their representative* as the representative defined in section 9(a)," the Board shall investigate and conduct a secret ballot election as appropriate. 29 U.S.C. §159(c)(1)(A). Thus, within the statutory scheme, a secret ballot election is warranted as a recourse where the employer refuses in the first instance to voluntarily recognize employee's designated representative.[1]

Second, Section 9(a) of the Act places bargaining representatives on equal footing regardless whether they are "designated" by employees through non-Board processes or "selected" by employees through Board-conducted elections. 29 U.S.C. § 159(a). The U.S. Supreme Court recognized this in *N.L.R.B. v. Gissel Packing Co*., 395 U.S. 575 (1969), where it reasoned that "[s]ince s 9(a) in both the Wagner Act and the present Act, refers to the representative as the one 'designated or selected' by a majority of the employees without specifying precisely how that representative is to be chosen, it was early recognized that an employer had a duty to bargain whenever the union representative presented 'convincing evidence of majority support.'" *Id.* at 596.

The courts have long recognized that voluntary recognition serves a valid function within the statutory schemed enacted by Congress. In *United Mine Workers v. Arkansas*

[1] The Board has not interpreted the cited language to require employer refusal to bargain as a jurisdictional prerequisite to conducting an election. *See Lamons Gasket*, 357 NLRB at n. 6; *Advance Pattern Co.*, 80 NLRB 29, 29-35 (1948). But the plain language of the statute makes clear that Congress considered elections to be a necessary recourse only when the employer has refused to recognize the union voluntarily.

Flooring Co., 351 U.S. 62 (1956), the Supreme Court acknowledged that a "Board election is not the only method by which an employer may satisfy itself as to the union's majority status," and that Section 9(a), "which deals expressly with employee representation, says nothing as to how the employee's representative shall be chosen." *Id*. at 71, 72. In *ILGWU v. N.L.R.B. (Bernhard-Altmann Texas Corp.)*, 366 U.S. 731 (1961), the Court affirmed that a union must demonstrate actual majority support before it may be recognized as the exclusive representative, but this can be accomplished if "an employer takes reasonable steps to verify union claims [of majority status] . . . by cross checking, for example, well-analyzed employer records with union listings or authorization cards." *Id.* at 738. In *Gissel Packing Co., supra*, 395 U.S. 575, the Court analyzed and rejected the Fourth Circuit's ruling that the Taft-Hartley Amendments had rendered authorization cards inoperative as a means to determine majority support, concluding that "the 1947 amendments did not restrict an employer's duty to bargain under Section 8(a)(5) solely to those unions whose representative status is certified after a Board election." *Id.* at 595-600 & n.17. *See also N.L.R.B. v. Broad Street Hosp. & Med. Ctr.*, 452 F.2d 302, 305 (3rd Cir. 1971) ("Voluntary recognition by employers of bargaining units would be discouraged, and the objectives of our national labor policy thwarted, if recognition were to be limited to Board-certified elections. . . ."); *N.L.R.B. v. Lyon & Ryan Ford, Inc.*, 647 F.2d 745, 750 (7th Cir. 1981) ("An employer's voluntary recognition of a majority union remains 'a favored element of national labor policy.'") (internal citation omitted), *cert. denied* 102 S.Ct. 391 (1981).

As far back as 1948, Republican Senator Fred Hartley, one of the authors of the Taft-Hartley Act, recognized the legitimacy of voluntary recognition and rejected the notion that the Board should shape policy based upon a presumption that such relationships are suspect:

> When approached by a union organizer with a demand for recognition, would it not be logical to suppose that [management] would first demand proof of a majority organization and recognize the union as the collective bargaining representative of his employees only when furnished with such proof?
>
> Why should it be necessary to continue the elaborate, costly, and confusing processes of the National Labor Relations Board, with its thousands of employees both in Washington and throughout the country, in examining, questioning, and determining in each instance which labor organizer has the confidence of a majority of the employees of every individual plant in the nation?
>
> Sometime, somewhere, our Federal government must make a start at retrenching.

Fred A. Hartley, OUR NEW NATIONAL LABOR POLICY, 188 (1948).

Whether or not one agrees that permitting Section 9(a) status to arise based on voluntary recognition was a wise policy choice for Congress to make in 1935, it cannot be seriously questioned that voluntary recognition is engrained in both the express terms and the underlying policy of the Act as it stands today. While Petitioner may presume that employers and unions are prone out of self-interest to violate the law, and while she may argue that the Board should fashion its policies around such presumptions, these are clearly not presumptions that *Congress* shared when it enacted the statute. Nor are they

presumptions that successive complements of the NLRB have entertained for over five decades in determining that the voluntary recognition bar legitimately advances the purposes of the Act.

The recognition bar strikes a proper balance between voluntary recognition as a legitimate means by which employees may designate their representatives for purposes of collective bargaining and the need to ensure that employees are afforded reasonable opportunities to choose whether they still wish to be represented by a union at all. Without offering empirical evidence or even persuasive argument, Petitioner contends that the voluntary recognition bar has interfered with the statutory rights of employees who want to decertify their union, and that it affords too much deference to the statutory rights of employees who desire their union to be able to negotiate for a reasonable period of time unfettered by challenges to its majority status. As we now show, the Petitioner presents no compelling reason for review of the Board's sound and longstanding practice.

II. *Lamons Gasket* was based on decades of Board law recognizing the valid role that the recognition bar plays in effectuating the purpose of the Act, and should not be disturbed.

In *Lamons Gasket*, the Board affirmed the voluntary recognition bar, and reversed the Board's determination in *Dana* that the voluntary recognition bar should be suspended until after the posting for 45 days of a notice advising employees of their right to seek the union's decertification upon a 30 percent showing of interest. To be sure, the Board in *Dana* did not do what Petitioner asks it to do here: to gut the voluntary recognition bar entirely. To the contrary, the *Dana* majority stated that "[w]e continue to support voluntary recognition, and thereby encourage the stability of collective-

bargaining relationships established on that basis, by continuing to apply the recognition bar." *See Dana Corp*., *supra*, 351 NLRB at 438. Far from throwing the bar out with the bathwater, as it were, the *Dana* majority modified the policy in order to effectuate what it considered to be a "'finer balance' of interests that better protects employee free choice." *Id*. at 434.

By all appearances, Petitioner's counsel (whose organization represented the petitioner in one of the consolidated *Dana* cases) now believes that *Dana* did not have the desired effect of having enough newly recognized units decertified. Instead of asking the Board to revert to *Dana*'s modification of the voluntary recognition bar (itself an unwarranted innovation), Petitioner proposes that the Board discard the bar altogether. In this sense at least, Petitioner tacitly concedes that the Board was correct in *Lamons Gasket* when it concluded that the *Dana* procedures resulted in only a small handful of voluntary recognitions being dissolved through decertification proceedings. The overwhelming majority of such relationships remained in effect either because employees were not interested in their opportunity to decertify the union or because they affirmed their choice of representation during the election. *See* 357 NLRB at 742-743. The *Lamons Gasket* majority concluded from this data that the *Dana* majority's presumption that authorization cards do not constitute reliable evidence of majority support was not borne out by the evidence. But Petitioner would draw a different conclusion: she would have the Board conclude that the lesson to be drawn is that the procedures adopted in *Dana* simply did not give employees *enough* opportunity to decertify their recognized union. She argues that the Board should forgo the notion of striking a "finer balance" of

interests, and simply get rid of the bar altogether.

The Board should reject Petitioner's invitation to experiment with longstanding policies based on nothing more than evidentiary speculation spiked with a transparent opposition to the very idea of collective bargaining. The voluntary recognition bar is soundly based upon the important proposition that "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed." *Franks Bros. Co. v. NLRB*, 321 NLRB U.S. 702, 705 (1944). Underlying this principle is the recognition that "[a] union should be given ample time for carrying out its mandate on behalf of its members, and should not be under exigent pressure to produce hot-house results or be turned out." *Brooks v. NLRB*, 348 U.S. 96, 100 (1954). Except for the brief detour under *Dana*, the Board has applied this principle to voluntary recognition arrangements without fanfare since 1966. *See Keller Plastic Eastern Inc*., 157 NLRB 583 (1966) (ruling that the employer could not withdraw recognition, even if it had a good faith doubt about the union's continued majority support, for a reasonable period of time); *Sound Contractors Ass'n*, 162 NLRB 364-365 (1966) (ruling that a petition seeking to challenge the recognized union's status is barred for a reasonable period of time following the recognition); *see also Universal Gear Service Corp*., 157 NLRB 1169, 1171 (1966), *enfd*. 394 F.2d 396 (6th Cir. 1968); *Blue Valley Machine & Mfg. Co*., 180 NLRB 298, 304 (1969), *enfd. in relevant. part* 436 F.2d 649 (8th Cir. 1971); *Montgomery Ward & Co*., 162 NLRB 294, 297 (1966), *enfd.* 399 F.2d 409 (7th Cir. 1968); *Broad Street Hospital & Medical Center*, 182 NLRB 302 (1970), *enfd*. 452 F.2d 302, 306-307 (3d Cir. 1971); *Timbalier Towing Co*., 208 NLRB

613, 613-614 (1974); *Whitemarsh Nursing Center*, 209 NLRB 873, 873 (1974); *Brown & Connolly, Inc*., 237 NLRB 271, 275 (1978), *enfd.* 593 F.2d 1373 (1st Cir. 1979); *Rockwell International Corp*., 220 NLRB 1262, 1263 (1975); *Ford Center for the Performing Arts*, 328 NLRB 1, 1-2 (1999); *MGM Grand Hotel, Inc*., 329 NLRB 464, 464-465 (1999); *Seattle Mariners*, 335 NLRB 563, 565-567 (2001). And as stated above, even when the *Dana* majority modified the bar in 2007, it explicitly affirmed the policy's importance and did not entertain the extreme notion that it should be discarded altogether. *See Dana Corp*., *supra*, 351 NLRB at 438.

Nor should the Board do so now. As the Board observed in *Lamons Gasket*, several aspects of voluntary recognition serve to safeguard the statutory rights of employees, even as it advances the Act's stated purpose of "encouraging the practice and procedure of collective bargaining." 29 U.S.C. § 151.

First, to lawfully gain voluntary recognition, a union must demonstrate an actual majority among all members of the bargaining in order to achieve lawful recognition. *See Bernhard-Altmann*, supra, 366 U.S. at 736-741. In contrast, whatever its other advantages as a means for accurately polling employee sentiment, a Board election tests only the desires of a majority of voting employees. *Lamons Gasket*, *supra*, 357 NLRB at 746; *RCA Mfg. Co*., 2 NLRB 159 (1936). Particularly in smaller bargaining units, it is easily conceivable that a union could win a Board election where it could not gain voluntary recognition.

Second, whether or not the union enjoyed actual majority support is subject to challenge through unfair labor practice proceedings for a full six months following

recognition, unlike Board-conducted elections where objectionable conduct must be challenged within seven days of the tally with an initial offer of proof. *Compare* 29 U.S.C. § 160(b) and 29 C.F.R. § 102.69(a). Petitioner cites cases where the Board has found that employers and unions have engaged in unlawful recognitions as purported "evidence" that voluntary recognitions are suspect. *See* Request for Review, n. 13. In fact, these isolated instances only substantiate that the processes provided by law for employees to bring unfair labor practice charges serves as an efficacious means to prevent illegal recognitions when they occur. But to recognize that some employers and unions have on rare occasion violated the law is not to say that the Board should presume as a general matter that employers and unions are prone to doing so.[2]

Third, upon a finding that recognition was extended to a union that did *not* enjoy the actual and uncoerced support of a majority of employees, the Board will nullify the bargaining relationship, even if the employer and the union acted in good faith in believing that majority employee support existed. *Bernhard-Altmann*, *supra*, 366 U.S. at 731; *Dairyland USA Corp*., 347 NLRB 310, 313-314 (2006) *enfd* 273 Fed. Appx. 40 (2d

[2] Adding a level of irony to her hyperbole, Petitioner points to the fact that she filed unfair labor practice charges against the Union and the Employer on the same day she filed her petition, arguing that the Regional Director therefore had grounds to suspect that the recognition in this case was invalid but was forced to "blindly defer" to existing law in dismissing the petition. Request for Review, p. 7. That is nonsense. The Regional Director offered Petitioner an immediate opportunity to present her evidence in favor of her allegations, and he refused to apply the recognition bar until she had had that opportunity. Petitioner declined the invitation. It is specious to argue that the Board should consider unproven allegations that the Employer and the Union acted illegally in determining whether the bar should apply, or to contend that the Regional Director "blindly deferred" to existing law by applying the bar when he was presented no evidence that the recognition was invalid.

Cir. 2008). The Board's remedy in these circumstance is a draconian one: not only is the collective bargaining agreement deemed to be void, the employer and the union will be held joint and severally liable to reimburse dues and initiation fees paid under a union security clause. *See id.* at p. 314; *Nw. Protective Serv., Inc*. & 342 NLRB 1201, 1205 (2004). Moreover, a union that has been unlawfully recognized cannot thereafter be recognized voluntarily by that employer, but can only gain representational status through a subsequent Board certification. *See, e.g.*, *Carlson Furniture Indus., Inc*., 153 NLRB 162, 167 (1965).

All of these measures provide a powerful disincentive for bargaining parties not to form bargaining relationships unlawfully, even if one entertains Petitioner's unwarranted presumption that employers and unions are prone out of self-interest towards disregarding the Section 7 rights of employees. Petitioner's supposition that Board processes are inadequate to protect the rights of employees is not based on any demonstrated history that voluntary recognition has forced employees into bargaining relationships that they do not want, nor has Petitioner shown that the recognition bar doctrine has kept employees locked into such relationships against the will of the majority in any bargaining unit. Petitioner's proposal to cast aside a rule that reflects years of Board experience presents no compelling reason to grant review.

In fact, discarding the voluntary recognition bar is more likely to hinder than advance the interest of free employee choice that Petitioner champions as the basis for her petition. If one borrows from Petitioner's playbook of viewing unions as motivated by interests different than those of the employees whom they represent, then one should

logically expect newly-formed unions to find it in their own self-interest to reach collective bargaining agreements quickly and on terms less advantageous than they might otherwise reach owing to the need to gain the protection of a contract bar against a possible decertification petition. Under this scenario, not only would collective bargaining as a process for balancing the interests of employers and employees suffer detriment, but employees opposed to that process would be barred from seeking to challenge their bargaining representative for up to three years under the Board's contract bar doctrine, as opposed to just a reasonable period of time under the voluntary recognition bar. Creating incentives for unions to produce "hot-house results" lest they be turned out could easily create consequences that are contrary to those that Petitioner professes to value. But that is often the result of taking a scorched-earth approach to years of settled policy.

No more workable is Petitioner's proposal that the recognition bar should be modified to commence after six months from recognition in order to coincide with the period during which employees may chose file an unfair labor practice charge in order to challenge the lawfulness of the recognition. Again, the logic animating this proposal is that the recognition is presumptively unlawful, which poses the question why employees do not simply file charges to challenge it. At any rate, the idea of imposing a delayed recognition bar that commences six months after notice of recognition and extends for six months from then before expiring is not sensibly rooted in the rationale that justifies the bar in the first place: to provide brand new bargaining relationships a reasonable opportunity to gestate prior to subjecting them to the immediate challenge. And once

again, the proposal is just as likely to inhibit as to foster employee free choice. Under the present system, employees unhappy with their bargaining representative need only wait a reasonable period of time in order to seek its decertification: in many cases that will be little more than six months from the date of recognition and commencement of bargaining. If the union has not produced satisfactory results by then, employees are free to file a decertification petition and might well enlist supporters to their cause who share their frustration with the lack of results over the prior months. But under Petitioner's delayed bar proposal, the bar would kick in at just about the time when employees may have grown dissatisfied that six months have passed and their bargaining representative has not produced results. But barred at that point from filing a petition, there would be nothing they could do but wait another six months. The delayed recognition bar is a novel ideal, but it is not one that comports in any meaningful way with the rationale for the bar of affording newly formed bargaining relationships the opportunity to produce results while preserving to employees the right to challenge their representative's status upon expiration of that period.

Under *Lamons Gasket*, the Board established benchmarks for what constitutes a reasonable period, defining it as no less than six months after the parties' first bargaining session and no more than one year. *See Lamons Gasket*, *supra*, 357 NLRB at 748 (incorporating the analysis from *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001), *enfd*. 310 F.3d 209 (D.C. Cir. 2002). Petitioner objects that these benchmarks are arbitrary and prone to producing irrational results. They are not. As defined in *Lamons Gasket*, the reasonable period is one that allows collective bargaining the opportunity to

succeed for a sensible amount of time from the date that bargaining actually commences (thus removing the incentive for employers to use delay to foster employee disaffection in the union). In setting the minimum at six months, the Board appropriately acknowledged that the facts of a particular case might justify a longer period up to an additional six months. This capacity of the Board to apply its policies on a case-by-case basis is an important strength of the agency, and reflects the reality that one-size-fits all approaches do not always fit the varied real world scenarios that present themselves. The current recognition bar is serving its purpose well, and absent convincing empirical evidence that it is not, it should be left undisturbed.

But even if one were inclined to consider whether the *Lamons Gasket* benchmarks should be altered, the present case is not a suitable vehicle for doing so. The petition here was filed a mere month and a half from the date of recognition, and it should be barred under *any* reasonable period analysis. This case raises no anomalies in the Board's present practice applying the recognition bar, nor does it provide any compelling occasion to revisit that practice by trying out new untested ideas.

In the end, one can certainly accept as a truism that the National Labor Relations Act is designed to protect the rights of employees, not employers and unions. But Petitioner's real argument that the Act should be administered to offer greater protections to employees who oppose collective bargaining than those who favor it should be rejected. In the vast majority of cases (including the present one), there is no evidence that the original recognition was based on anything other than the freely expressed will of the majority. Allowing minorities of employees to immediately challenge the

demonstrated majority's desire to engage in collective bargaining constrains the statutory rights of that majority with little upside for the minority, who need only wait a reasonable period of time before seeking the union's decertification if they continue to believe that such a result would be in their interests. The voluntary recognition bar serves its function, and should not be subjected to further experimentation, particularly when the only reason is unfounded hostility to voluntary recognition.

CONCLUSION

For the foregoing reasons, Petitioner's request for review presents no compelling reason warranting review, and should be denied.

Dated: September 10, 2018

Respectfully submitted,

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I am employed in the city and country of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 800, San Francisco, CA 94105.

I hereby certify that a true and correct copy of the foregoing document entitled **UNITE HERE LOCAL 8' OPPOSITION TO REQUEST FOR REVIEW** was filed using the National Labor Relations Board on-line E-filing system on the Agency's website and copies of the aforementioned were therefore served upon the following parties via electronic mail on this 10th day of September, 2018 as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 10, 2018 at San Francisco, California.

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